

**DECISION**

23927  
**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

**FILE:** B-207793

**DATE:** January 3, 1983

**MATTER OF:** The Advantech Corporation

**DIGEST:**

1. Protest based on agency's inclusion of alleged proprietary information in a solicitation amendment, its failure to issue another amendment reflecting certain discussions, and its choice of contract type is untimely because such grounds concern alleged solicitation improprieties which, under GAO Bid Protest Procedures, must be filed prior to appropriate closing date. Protest, however, was not filed until after closing date for receipt of best and final proposals.
2. Agency does not deviate from evaluation criteria which stress technical and management concerns by permitting offerors to correct deficiencies in proposals.
3. Where, despite discussions and the issuance of amendments and submission of best and final offers, it appears that neither the agency nor the protester made significant changes affecting technical matters subsequent to initial scoring of technical proposals, agency is not required to rescore technical proposals after receipt of best and final offers.

The Advantech Corporation protests the proposed award of a contract to Atlantic Analysis Corporation under request for proposals No. F44650-82-R-0002 issued by Langley Air Force Base, Virginia for flight planning software. We deny those portions of the protest relating to proposal evaluation and dismiss the remainder as untimely.

The solicitation sought proposals for the services necessary to design, program, deliver and maintain flight planning software for use with desk top computer systems. The procurement was set aside for small business firms and

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contemplated a fixed-price contract. The solicitation advised that in the evaluation of proposals technical and management factors would, together, have relatively more importance than price in determining the successful offeror.

Ten proposals were received by the March 1, 1982 closing date. The Air Force evaluators conducted an initial review of the technical and management portions of those proposals and, prior to scoring, conducted technical discussions with the offerors. On March 23, after receiving the offerors' responses to the questions raised during negotiations, the evaluators scored the technical and management proposals and concluded that all ten were acceptable but differed in quality.

The evaluators next examined the price proposals, and later requested best and final offers, which all ten offerors provided by May 21. The evaluators then calculated an overall ranking of proposals, using the earlier technical and management scoring and the final price proposals. Atlantic received the best overall score based on technical, management and price factors and was selected for award.

Advantech argues that the proposed award is improper because the agency did not adhere to the stated evaluation criteria but instead made price the deciding factor. The protester also complains that the agency's issuance of amendment 0004, which changed the performance site for software maintenance from Langley Air Force Base to the contractor's facility, improperly disseminated Advantech's proprietary approach for performing that portion of the work. Advantech further states that the agency should have issued another amendment following certain discussions with offerors concerning the solicitation's statement of work. Finally, Advantech disagrees with the agency's use of a fixed-price type contract for the project.

The grounds of protest concerning the agency's issuance of amendment 0004, its failure to issue another amendment, and the choice of contract type are untimely and we will not consider them. Under our Bid Protest Procedures, protests based upon alleged improprieties which do not exist in the initial solicitation but which are subsequently incorporated therein must be protested no later than the next closing date for receipt of proposals following their incorporation, while protests based on alleged improprieties in the original solicitation must be filed prior to the closing date for receipt of initial proposals. 4 C.F.R. § 21.2(b) (1) (1982). Therefore, a protest concerning the issuance of amendment 0004 and the agency's failure to incorporate its

technical discussions in another written solicitation amendment, both of which constitute solicitation improprieties, should have been filed prior to the May 21 closing date for receipt of best and final offers. Skyways, Inc., B-201541, June 2, 1981, 81-1 CPD 439. Also, since the contract type contemplated by the agency was evident from the face of the solicitation as originally issued, any objection to that part of the solicitation should have been filed by the March 1 closing date for receipt of initial proposals. Since Advantech's protest was not filed until June 8, well after both closing dates had passed, these grounds of protest are untimely and will not be considered.

Advantech's allegation that the Air Force deviated from the evaluation criteria's emphasis upon technical and management factors reflects a misunderstanding of the negotiation process. Advantech points to the fact that offerors were given an opportunity to upgrade proposals through correction of deficiencies during discussions, and argues that because the weaker offerors were allowed to upgrade their proposals in this manner, technical leveling occurred, which necessarily diminished the importance of technical considerations when compared to price. Advantech further argues that the Air Force must have based its final selection on price alone because there was not enough time between receipt of best and final offers and the selection announcement for there to have been a reevaluation of technical proposals. Advantech believes that it suffered from this alleged enhancement of the weight given price in the selection since its technical proposal was highly rated from the beginning, as evidenced by the fact that the agency required only minor clarification of the proposal.

The governing statute, 10 U.S.C. § 2304(g) (1976), requires the conduct of written or oral discussions. This mandate can only be satisfied with discussions that are meaningful. Union Carbide Corporation, 55 Comp. Gen. 803 (1976), 76-1 CPD 134. In order to be meaningful, discussions in general must point out weaknesses, excesses or deficiencies in proposals so that the Government may obtain the most advantageous contract. On the other hand, deficiencies in a proposal should not be pointed out where to do so would result in disclosure of one offeror's approach to another or result in technical leveling where the weakness in a proposal is caused by lack of diligence or

competence. Ford Aerospace & Communications Corporation, B-200672, December 19, 1980, 80-2 CPD 439. Generally, however, the fact that offerors are provided an opportunity to correct deficiencies in their proposals does not mean that there has been any diminution of the relative importance of technical factors in proposal evaluation.

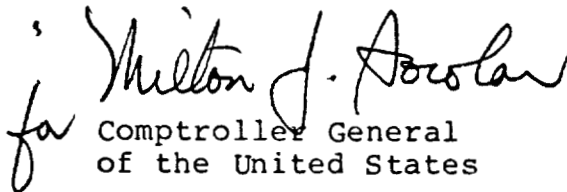
Here, moreover, it does not appear from the record that the awardee was selected because its inferior proposal was upgraded to Advantech's level during discussions. Contrary to Advantech's position, Advantech's proposal was not rated highest from a technical or management standpoint at any stage of the evaluation. Further, as was the case with the protester, the agency requested Atlantic (which scored higher than Advantech under both technical and management factors and offered a lower price) to clarify only one relatively minor point during discussions. Therefore, we have no reason to object to the type and scope of discussions held by the agency nor is there any support for the protester's contention that these discussions resulted in a deviation from the solicitation's evaluation scheme.

Advantech's assertion that the Air Force failed to rescore technical proposals after receipt of final offers is correct. The March 23 scoring of the technical proposals took place, however, after offerors' responses to the agency's technical questions were received. Although two solicitation amendments and three letters were sent to offerors after the closing date for submission of initial proposals, these communications did not have a significant impact on technical proposals. Rather, these changes affected pricing primarily, since they concerned such matters as the site for performance of software maintenance, the non-availability of progress payments, the addition of aircraft for flight planning, the change in location of Government testing of software, the condition of Government furnished software and clarification of pricing proposals. To the extent that certain of these changes, such as the condition of Government furnished software and the additional aircraft for flight planning, could arguably be considered to affect the offerors' technical proposals, they affected all proposals equally. In this regard, we note that Advantech's proposal revisions submitted after the scoring, on April 6 and May 17, changed its price but not its overall technical approach for developing a computerized system for

flight planning. In these circumstances there was no reason for the Air Force to rescore technical proposals after receipt of final offers. See Human Sciences Research, Inc., B-200636, February 18, 1981, 81-1 CPD 105.

Further, the record does not support the protester's contention that the final selection was based only on price. After receipt of best and final offers, the offerors technical and management scores were combined with the price scores assigned to the final price proposals and the winner selected based on the best combined score in accordance with the evaluation scheme announced in the solicitation.

The protest is denied in part and dismissed in part.

*for*   
Comptroller General  
of the United States